

Defendant-Counterclaim Plaintiff.

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) Civil Action No.: 1:13-cv-12553  
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On January 6, 2016, Braintree filed an Emergency Renewed Motion to Enforce Prior Court Rulings and to Compel Discovery on seven (7) listed issues. (Doc. 189, pp. 1-2). This Cross-Motion addresses the issues identified in paragraphs 1 and 4-6 in Braintree's requested relief as well as related discovery by Braintree including its recently served 30(b)(6) notice on many of the same subjects. The remaining matters will be addressed separately in another paper.

In further support of this motion, Ferring relies upon “Plaintiff's Memorandum supporting its Emergency Cross-Motion for Entry of a Protective Order” dated January 8, 2016 and the “Declaration of Brian R. Michalek in Support of its Emergency Cross-Motion for Entry of a Protective Order” dated January 8, 2016, filed simultaneously herewith. Accordingly, Ferring requests the following relief:

**I. Off-Label Promotion**

Regarding off-label promotion, Ferring requests entry of a protective order that bars deposition and discovery of these irrelevant matters:

- Topic 6: Knowledge of Ferring's sales force and/or medical science liaisons of physicians or their staffs instructing patients to take Prepopik other than as specifically directed on its label, including but not limited to suggestions that it be taken with additional liquids or that it be taken with other substances, such as Miralax, Dulcolax, magnesium citrate, Linzess, or Bisacodyl. (Decl., Ex. A).
- Topic 7: Reports, complaints and/or feedback from physicians or their staffs concerning... their instructing patients to use Prepopik other than as specifically directed on its label. (Decl., Ex. A).
- Issue 1: Ferring shall forthwith produce to Braintree all hits generated by any of the following search terms run in the disjunctive against all of Ferring's Prepopik salespeople's mailboxes: Miralax, Dulcolax, magnesium citrate (including the roots “mag” and “cit” within 2 words of each other), Linzess, or Bisacodyl. (Doc. 189, p. 1).

**II. Kristen Rossi Issues**

Regarding the Kristen Rossi issues, Ferring requests entry of a protective order that bars deposition and discovery of these irrelevant matters:

- Topic 11: Allegations made by Kristen Rossi concerning improper sales practices by Ferring employees, including but not limited to any investigation of such allegations, and the termination of Kristen Rossi's employment. (Decl., Ex. A).
- Issue 6: Ferring shall produce all documents responsive to Braintree's requests in its Third Requests for Production regarding the former salesperson, Kristen Rossi, who has sued Ferring for retaliating against her for reporting off-label promotions. (Doc. 189, p. 2).

### **III. Discovery Compliance**

Regarding discovery compliance, Ferring requests entry of a protective order that bars deposition and discovery of these irrelevant matters:

- Topic 15: Efforts by Ferring to collect and produce documents in this action, including but not limited to its compliance with document requests in this case [as it relates to the off-label issues]. (Decl., Ex. A).
- Topic 16: Efforts by Ferring to comply with the rulings that the Court made on October 21, 2015. (Decl., Ex. A).
- Issue 4: Ferring may withhold for a responsiveness and privilege review only those hits that also have a hit for its outside counsel in this litigation as a sender or recipient. The remainder of the production shall be produced within 5 calendar days of the Order. (Doc. 189, p. 4).
- Issue 5: Ferring shall also produce for an *in camera* inspection within 5 days those portions of any emails among its counsel, between December 17, 2015 and December 31, 2015, inclusive, that concern whether Ferring could permissibly use limiting search terms along with those that the Court expressly required. (Doc. 189, p. 4).

### **IV. Off-Label Subject Matter in other Depositions**

Ferring further moves for a Protective Order prohibiting Braintree from proceeding with deposition discovery as to any witnesses, including but not limited to, Andrew Zanga, Richard Rice, Kristen Rossi, Melissa Wilmer, Andrea Katusin and Monika Factor, related to allegations that Ferring engaged in off-label promotions.

### **REQUEST FOR AN ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), Ferring requests oral argument on its Emergency Motion for Entry of a Protective Order.

Respectfully submitted

OLSON & CEPURITIS, LTD.

Dated: January 8, 2016

/s/ Arne M. Olson

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Attorneys for Plaintiff Ferring Pharmaceuticals Inc.

**CERTIFICATE OF CONFERENCE PURSUANT TO LOCAL RULE 7.1**

I, Arne M. Olson, counsel for Ferring, hereby certify that this motion and related submissions comply with Local Rules 7.1(a)(2) and 37.1(b), that the moving party has attempted to timely confer with opposing counsel concerning these matters, and that opposing counsel does not assent to the relief sought herein.

/s/ Arne M. Olson  
Arne M. Olson

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system on January 8, 2016 and will be sent electronically to the registered participants as identified on the NEF:

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